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3 Reno, Nevada 89509
4 Nevada Bar Number 003331
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5 Attorney for Chapter Seven Trustee

6 UNITED STATES BANKRUPTCY COURT
7 DISTRICT OF NEVADA

8 oOo
9

10 IN RE

11 CHRISTOPHER J. SIEBEN and
12 TONYA M. SIEBEN,

13 Debtor(s).
14 _____ /

BK-N- 09-53991
CHAPTER 7
Hearing Date: 9/26/12
and Time: 10:00 a.m.
Mtn No. _____
Est Time: 5 Minutes

MOTION TO APPROVE COMPROMISE
OF CLAIM AGAINST DEBTORS

15 COMES NOW Chapter Seven Trustee, Donald Gieseke, by and
16 through undersigned counsel and files the following Motion to Approve a
17 Compromise of the Estate's Claim against the Debtors. This motion is
18 made and based upon the pleadings on file herein and the Memorandum
19 of Points and Authorities attached hereto.

MEMORANDUM OF POINTS AND AUTHORITIES

20 The Debtors filed the instant bankruptcy on November 9, 2009.
21 Christopher Sieben was the beneficiary of a generation skipping trust set
22 up by Mary Hansen. There were 12 beneficiaries of this trust, including
23 Mr. Sieben. Wells Fargo is the Trustee. The Trust res consists of two
24 commercial properties in Stateline, Nevada. The trust provided that each
25 beneficiary shall receive his or her share upon reaching the age of 25.
26 Wells Fargo has quitclaimed proportional interests these commercial
27
28

1 properties to Mr. Sieben. His proportional interest is one twelfth or 8.3%.
2 The property was conveyed to him on March 24, 2003.
3

4 These properties generate rents. Socrates Kostas is the Wells Fargo
5 assistant vice president who administers the trust. The Trustee served
6 Mr. Kostas with a subpoena to find out details with respect to this asset.
7 In response to the Subpoena, Mr. Kostas disclosed that Mr. Sieben's share
8 of rental income from the trust is \$479.92 plus \$239.99 each month.
9

10 On June 20, 2012 the Trustee filed a motion to compel turnover of
11 the fractional interests and to compel an accounting of post petition
12 rents received (Docket No. 52). The motion was scheduled to be heard on
13 September 26, 2012. On September 25, 2012 the Debtors filed a motion
14 to convert their case to Chapter Thirteen (Docket No. 62). At the
15 September 26, 2012 hearing, the Court continued the motion to compel
16 to the time when the motion to convert was scheduled to be heard -
17 November 13, 2012 (Docket No. 66).
18

19 The parties have since reached a settlement of the issues regarding
20 this property interest. The Debtors have agreed to pay the Estate
21 \$1,000.00 per month for 36 months. This obligation is secured with an
22 absolute assignment of the Debtors' rights with respect to the rents and
23 sale proceeds generated by Christopher Sieben's one twelfth interest in
24 the Stateline property. A copy of the settlement agreement has been
25 attached hereto as Exhibit "1". The Debtors have also executed an
26 absolute assignment of their interest in the rents pursuant to the
27 settlement agreement.
28

29 Motions to compromise claims of the estate are brought under Fed.
30 R. Bank. Pro 9019. In determining the reasonableness of a compromise,
31
32

1 courts examine the factors which were set forth in In re A & C
2 Properties, 784 F.2d 1377, 1382 (C.A.9 1986).

3
4 In determining the fairness, reasonableness and adequacy of
5 a proposed settlement agreement, the court must consider:

6 (a) The probability of success in the litigation; (b) the
7 difficulties, if any, to be encountered in the matter of
8 collection; (c) the complexity of the litigation involved, and
9 the expense, inconvenience and delay necessarily attending
it; (d) the paramount interest of the creditors and a proper
deference to their reasonable views in the premises.

10 In the case at bar, the settlement is fair. First, the rents are not
11 guaranteed. It requires a stable tenant. Mr. Sieben's counsel has
12 represented his client does not always receive rents. Second, the estate
13 asset is a fractional interest shared with many others. The large number
14 of co-owners makes the probability of a §363(h) motion being granted
15 unlikely. The fractional interests by themselves are not an attractive
16 asset either. In light of the foregoing, the Trustee respectfully requests
17 that the attached settlement agreement be approved.

18
19 Dated: This 19 day of October, 2012

20
21 By: 
22

23 Michael Lehnert, Esq.
24 429 Marsh Ave.
Reno, Nevada 89509
Nevada Bar Number 003331

Exhibit 1

Exhibit 1

Settlement Agreement

COME NOW Debtors, Christopher J. Sieben and Tonya M. Sieben, by and through their attorney, John S. Bartlett, Esq. and Chapter Seven Trustee, Donald Gieseke, by and through his attorney, Michael Lehners, Esq. and stipulate as follows:

The Debtors filed the instant bankruptcy on November 9, 2009. Christopher Sieben was the beneficiary of a generation skipping trust set up by Mary Hansen. There were 12 beneficiaries of this trust, including Mr. Sieben. The trust appointed Wells Fargo as the Trustee. The trust property consists of two commercial properties in Stateline, Nevada. This property is rented, and Wells Fargo administers the rents. Mr. Sieben's share of rental income from the trust is approximately \$719.91 each month.

The trust provides that when each beneficiary turns 25, his or her proportional interest in the Stateline property shall be transferred to the beneficiary. As a result, Mr. Sieben holds a one twelfth interest in the property.

On June 20, 2012 the Trustec filed a motion to compel turnover of this interest and to compel an accounting of the post petition rents which were received. The Debtors opposed this motion, and the matter came for hearing before the Bankruptcy Court on September 26, 2012. On September 25, 2012 the Debtors filed a motion to convert their bankruptcy to one under Chapter Thirteen. This motion to convert was filed after entry of the Debtors' discharge.

At the hearing, the Court granted the Trustee's request for an accounting. It also set a briefing schedule to address the pending motion

1 to convert. After the hearing, the parties reached a settlement of this
2 matter.

3 The terms of the settlement agreement between the parties are as
4 follows:

5 1. The Debtors agree to pay the sum of \$1,000.00 per month to
6 the Chapter Seven Trustee. The first of these payments is due on October
7 15, 2012 with a like payment coming due on the 15th of each
8 subsequent month. Should the 15th fall on a weekend or Holiday, then
9 the payment shall be due the next business day.

10 2. The Debtors shall execute an absolute assignment of their
11 rights with respect to the rents and sale proceeds generated by
12 Christopher Sieben's one twelfth interest in the Stateline property. This
13 assignment shall be held by the Chapter Seven Trustee. Upon payment
14 of the amounts due under this stipulation, the assignment shall be
15 returned to the Debtors. In the event of a default under this agreement,
16 the Trustee shall use the assignment to collect the Debtors' share of rents
17 and/or sale proceeds to pay the balance due under this agreement plus a
18 reasonable attorney fee in the event of a default. The service of the
19 assignment upon Wells Fargo shall obligate it to pay the Trustee rents
20 and proceeds from this property until the unpaid balance under this
21 stipulation is satisfied. The service of said notice of assignment shall
22 terminate the Debtors' right to release Wells Fargo of its obligations until
23 these sums are paid. Wood v. Chicago Title Agency of Las Vegas, Inc.,
24 847 P.2d 738, 109 Nev. 70, (Nev. 1993).

25 3. In the event that the Debtors default with respect to any of
26 the terms herein, the Trustee shall give the Debtors notice of the default
27 in writing by regular mail addressed to Christopher J. Sieben and Tonya
28

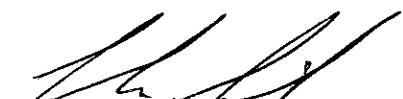
1 M. Sieben 372 Sunchase Court, Carson City, Nevada 89701 with a copy
2 sent by regular mail to Debtors' counsel, John Bartlett, Esq., 1201
3 Johnson Street, Suite 130, Carson City, Nevada 89706-6000. In the event
4 that the Debtors fail to cure said default within 15 days from the date
5 such notice was set out, the Trustee shall be entitled to collect all sums
6 owing to the Debtors based upon the rental or sale of the Stateline
7 property.

8 4. It is further understood and agreed that this Settlement
9 Agreement is executed as a compromise of disputed claims and that the
10 consideration furnished pursuant to this agreement is not to be
11 construed as an admission of liability on the part of either party,
12 including their principals, agents, servants, successors in interest and/or
13 employees, such liability being expressly denied.

14 5. In the event that there is a breach of this settlement
15 agreement, the prevailing party shall be entitled to an award of
16 reasonable attorney fees and costs.

17 Dated: 10-15-2012

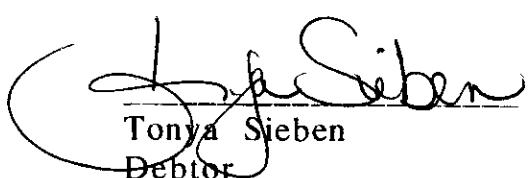
18 By



19
20 Christopher Sieben
21 Debtor

17 Dated: 10/15/2012

18 By



19 Tonya Sieben
20 Debtor

22 Dated: _____

23 By

24 _____
25 Donald Gieseke
26 Trustee

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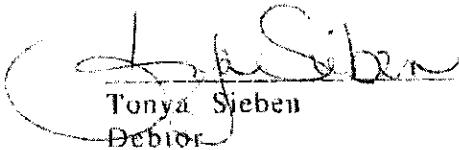
18 By



19
20
21 Christopher Sieben
Debtor

Dated: 10/15/2012

By


Tonya Sieben
Debtor

22 Dated: 10/19/2012

23 By



24
25
26 Donald Gieseke
Trustee